

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 25, 2013

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1435 by Hinojosa (Relating to providers' rights to due process under the Medicaid program.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1435, As Introduced: a negative impact of (\$7,386,562) through the biennium ending August 31, 2015.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$3,693,281)
2015	(\$3,693,281)
2016	(\$3,693,281)
2017	(\$3,693,281)
2018	(\$3,693,281)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable Savings/(Cost) from <i>Federal Funds</i> 555	Change in Number of State Employees from FY 2013
2014	(\$3,693,281)	(\$3,693,280)	2.0
2015	(\$3,693,281)	(\$3,693,280)	2.0
2016	(\$3,693,281)	(\$3,693,280)	2.0
2017	(\$3,693,281)	(\$3,693,280)	2.0
2018	(\$3,693,281)	(\$3,693,280)	2.0

Fiscal Analysis

The bill would amend Chapter 531 of the Government Code by adding various definitions, including “allegation of fraud or abuse” and “credible allegation.”

The bill would amend various provisions related to processes for appeals for Medicaid providers who are subjected to a hold on payment related to a credible allegation of fraud as determined by the Office of Inspector General (OIG) at the Health and Human Services Commission (HHSC). The bill would require the OIG to give the provider the office's preliminary report of findings and a calculation of any proposed recoupment amount. The bill would authorize the provider to appeal an order by the State Office of Administrative Hearings (SOAH) regarding a hold on payment by filing a petition for judicial review in a district court in Travis County.

The bill would entitle a provider who ultimately prevails in a hearing or appeal to prompt pay of all payment held and interest on such held payments.

The bill would require the OIG to not accept anonymous allegations of fraud or abuse and to conduct an integrity review of each allegation of fraud or abuse within 30 days. The bill would also require a panel of expert physicians to review an OIG determination of credible allegation of fraud related to a physician or a physician group to issue a final determination as to whether a credible allegation of fraud exists.

The bill would authorize the OIG to impose a partial hold on payments, not to exceed 50 percent of the reimbursement due, to a provider after determining a credible allegation of fraud exists. The bill would require the OIG to refer the case to the Office of the Attorney General's Medicaid Fraud Control Unit within one day after the payment hold is imposed, and would be required to lift the hold if the MFCU declines the referral or on the 30th day.

The bill would require the executive commissioner of HHSC in consultation with Texas Medical Board to establish rules governing the expert physician review panel.

The bill would establish provisions for requesting an appeal by a provider who is the subject of a recoupment of overpayment or recoupment of debt by the OIG and authorize an appeal at SOAH. The bill would authorize the provider to appeal an order by SOAH regarding an overpayment by filing a petition for judicial review in a district court in Travis County.

Methodology

The OIG anticipates 4 additional SOAH hearings per year would be requested as a result of entitling providers subject to MFCU payment hold (with the sole exception of a hold related to compelling the production of records) to a hearing at SOAH. The additional cost per SOAH hearing is estimated to be \$13,193 for a total annual cost of \$52,773 each year.

OIG estimates that the provision of the bill that entitles a provider to prompt repayment and any interest on a payment hold could have a significant fiscal impact, depending on the amount of time of the hold and the amount being held; however, OIG does not have enough information to estimate the impact.

Although the majority of the bill seems designed to address payment holds and overpayments arising out of fraud investigations, the bill as written authorizes a SOAH hearing upon request to all OIG-identified overpayments. The OIG estimates that all overpayment cases identified by the office, totalling over 7,000 per year, could potentially be appealed to SOAH. The OIG estimate assumes that the percentage of cases requesting an appeal would yield 556 cases in each year from FY 2014 through FY 2018. SOAH costs are approximately \$13,193 per case. Total SOAH costs billed to OIG for overpayment appeals are estimated to be \$7,333,788 each year.

Medicaid administrative costs are matched at 50 percent with federal funds; therefore the

total General Revenue cost per year for increased cases at SOAH is anticipated to be \$3,693,281.

OIG estimates potential negative fiscal impact related to the expert physician panels, but since rules have not been developed governing the panel, the cost cannot be estimated at this time. OIG also estimates a potential loss of federal financial participation as a result of the bill limiting the maximum hold on payments to 50 percent of what is billed and because it defines credible allegation of fraud differently than federal regulations. There is a risk that federal matching funds paid to providers would be disallowed and reclaimed by the Centers for Medicare and Medicaid Services. However, the OIG does not have sufficient information to quantify the fiscal impact.

The Texas Medical Board and the Office of the Attorney General anticipate any additional work resulting from the passage of the bill could be absorbed within existing resources.

SOAH anticipates there would be additional cases related to overpayment and payment holds. However, SOAH receives funding for work it performs for HHSC through an interagency contract, and therefore, increased costs at SOAH are included in the costs to HHSC in the tables above. SOAH does anticipate needing an additional 2.0 administrative law judges to accomplish additional workload resulting from passage of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 360 State Office of Administrative Hearings, 503 Texas Medical Board, 529 Health and Human Services Commission

LBB Staff: UP, CL, MB, ES, VJC